

NOT FOR CITATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DAVID WESLEY HAWKINS,

Petitioner,

No. C 03-3668 PJH

v.

**ORDER GRANTING IN PART AND
DENYING IN PART PETITIONER'S
THIRD REQUEST FOR DISCOVERY**

JOHN CAVALLI, Chief, Santa Clara
County Probation Department

Respondent.

On August 30, 2005, this court granted Hawkins' request to conduct additional discovery regarding claim five pursuant to Habeas Rule 6(a). On March 2, 2006, Hawkins notified the court that the additional discovery had been completed. Pursuant to this court's orders, the parties submitted supplemental briefs re: claim five following the additional discovery. Hawkins also moved for additional discovery, requesting that he be permitted to depose prosecuting attorneys Frank Berry and Michael Boggess, in addition to Cisco employees Richard Clark, Diane Olsen, and Michael Volpi.

Habeas Rule 6(a) provides that a "party shall be entitled to invoke the processes of discovery available under the Federal Rules of Civil Procedure if, and to the extent that, the judge in the exercise of his discretion and for good cause shown grants leave to do so, but not otherwise." Good cause for discovery under Rule 6(a) is shown "where specific

1 allegations before the court show reason to believe that the petitioner may, if the facts are
2 fully developed, be able to demonstrate that he is . . . entitled to relief . . .” *Pham v.*
3 *Terhune*, 400 F.3d 740, 743 (9th Cir. 2005) (*quoting Harris v. Nelson*, 394 U.S. 286, 299
4 (1969)). The Ninth Circuit has also described this standard as being that discovery must be
5 allowed when it is “essential” for the petitioner to “develop fully” his or her underlying claim.
6 *Id.* (*quoting Jones v. Wood*, 114 F.3d 1002, 1009 (9th Cir. 1997)). Where the evidence
7 sought via a petitioner’s discovery request “may well contain favorable, material
8 information,” the Ninth Circuit has held that it is “essential,” and that the district court is
9 required to grant the petitioner’s request pursuant to Rule 6(a). *Id.*

10 Although the discovery standard recently articulated by the Ninth Circuit is a
11 permissive one, it is not without limits. The court concludes that Hawkins has *not* shown
12 good cause for discovery with respect to Clark, Olsen, and Volpi, and DENIES his request.
13 The court also concludes that given the fact that Berry has submitted a declaration
14 attesting that he was unaware of the witnesses’ overlapping financial interests, Hawkins
15 has not shown good cause to depose Berry. The court therefore DENIES Hawkins’ request
16 with respect to Berry as well. However, the court will permit Hawkins to depose Boggess in
17 connection with his prosecutorial misconduct claim. Hawkins is advised that NO
18 FURTHER DISCOVERY WILL BE PERMITTED in the context of these habeas
19 proceedings.

20 The parties shall have no more than **sixty days** from the date of this order to
21 complete the requested deposition. **Within seven days** of completion of the deposition,
22 Hawkins shall file and serve a statement regarding the completion of the discovery. **Within**
23 **21 days of completion** of the deposition, Hawkins is ordered to file a supplemental brief
24 addressing the impact of the additional testimony on claim five. The state shall file and
25 serve its supplemental opposition **fourteen days** after Hawkins’ opening brief. Hawkins
26 may file and serve a reply, if any, no later than **seven days** after the state’s supplemental
27 opposition. Given the numerous extensions already granted in this case, NO FURTHER
28

1 EXTENSIONS OF THE ABOVE DEADLINES WILL BE PERMITTED. Upon the
2 completion of this discovery and supplemental briefing, the court will consider the case fully
3 briefed.

4 **IT IS SO ORDERED.**



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6 Dated: June 2, 2006

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PHYLLIS J. HAMILTON
United States District Judge